

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of	)	
Implementation of Section 621(a)(1) of	)	
the Cable Communications Policy Act of 1984	)	MB Docket No. 05-311
as amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	

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**COMMENTS OF THE CITY OF LAKE WORTH, FLORIDA**

These Comments are filed by the City of Lake Worth, Florida (hereinafter referred to as the “City”) in response to the Federal Communications Commission’s (hereinafter “FCC” or “Commission”) Notice of Proposed Rulemaking (“Cable Franchising NPRM” or “NPRM”).<sup>1</sup> The NPRM specifically addresses the implementation of Section 621(a)(1) of the Communications Act of 1992, which provides that “A franchising authority...may not unreasonably refuse to award an additional competitive franchise.”<sup>2</sup> The City of Lake Worth has not unreasonably refused to award additional competitive cable franchises. In fact, the City has encouraged and sought additional competitive cable providers, since competition promotes low cable rates and because competition enhances customer service among competitors.

It is the City’s position that local governments are the most qualified entities to ensure the proper issuance of cable franchises for new entrants into the video services field on a timely basis, while ensuring the achievement of Congressionally-stated policy goals, including responsiveness to local community needs. In support of this position, the City would like to inform the Commission about the recent history of cable television franchising in the City’s jurisdiction, and to respond to certain positions taken and questions posed by the Commission in its NPRM.

**Introduction**

The local cable franchising process promotes competition by giving equitable opportunities to *all providers* who want to use the rights of way to provide video service. Creating an exception for telephone companies that want to offer video service, by exempting them from requiring a franchise agreement, creates an unnecessary competitive advantage for

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<sup>1</sup> *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television and Consumer Competition Act of 1992*, MB Docket No. 05-189, Notice of Proposed Rulemaking (released November 18, 2005).

<sup>2</sup> See 47 U.S.C. §541(a)(1).

these companies. Local cable franchising ensures that providers are permitted access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that the City's local community's specific needs are met and that local customers are protected. Without the franchising process, the City would be unable to provide this important supervisory function.

Congress did not intend for the Commission to preempt or supersede local government's franchising authority. Congress delegated specific powers to local franchising authorities which are not anti-competitive as some new entrants assert. The Cable Act acknowledges that municipalities are best able to determine a community's cable-related needs and interests. Accordingly, it would not be appropriate for the Commission to question the City in its identification of such needs and interests. The House Report states:

It is the Committee's intent that the franchise process take place at the local level where city officials have the best understanding of local communications needs and can require cable operators to tailor the cable system to meet those needs. However, if that process is to further the purposes of this legislation, the provisions of these franchises, and the authority of the municipal governments to enforce these provisions, must be based on certain important uniform Federal standards that are not continually altered by Federal, state or local regulation.<sup>3</sup>

Furthermore, in *Union CATV v. City of Sturgis*, the Court concluded that, "judicial review of a municipality's identification of its cable-related needs and interests is very limited. A court should defer to the franchising authority's identification of the community's needs and interests..."<sup>4</sup> There is no reason in fact or law supporting the Commission's implementation of a different standard from that of the court. Thus, franchising should remain at the local level and any unreasonable denials should be reviewed by the judiciary.

The City has an interest and the right, delegated by Congress to prevent economic redlining, to establish and enforce customer service standards and to ensure the provision of adequate public, educational and governmental access channel capacity, facilities or financial support. Furthermore, for the minority of communities that may abuse their authority, the solution is not to undermine the entire franchising process. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.<sup>5</sup>

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3 See H.R. REP. NO. 98-934, at 24, *reprinted in* 1984 U.S.C.C.A.N. at 4661.

4 See *Union CATV v. City of Sturgis*, 1997 FED App. 0075P (6th Cir.).

5 The City's franchising process ensures that customer service complaints, in most cases are handled within 24 hours or at the most, within 72 hours. The City has a rapport with the cable operator to ensure that issues are resolved. This type of relationship is a direct result of the local franchising process. It is inconceivable that a state or federally held franchise with dispute resolution maintained at the state or federal level is going to be comparable to the current service standards in the City. Finally, the Commission does not have the staff, budget or resources for handling complaints in such a timely manner.

## **The Franchising Process**

### **Initial Franchise**

Cable service cannot be provided unless there is a cable franchise granted by the franchising authority.<sup>6</sup> “Franchise” means the “*non-exclusive*” right granted by the City to a Franchisee in a Franchise Agreement to construct, maintain and operate a Cable System to provide Cable Services under, on, and over Streets, roads and any other public ways, rights-of-ways, or easements within all or specified areas of the City...”<sup>7</sup> The City is empowered by the cable television regulations of Title 47 of the United States Code to act as a Local Franchising Authority (LFA) with all of the powers and authority that status provides, including but not limited to negotiating and granting cable television franchises.

The public policy is that cable television regulations should include franchise procedures and standards which encourage the growth and development of cable systems and assure that cable systems are responsive to the needs and interests of the local community; and should promote competition in cable communications and minimize unnecessary regulation of cable systems.<sup>8</sup> Accordingly, an LFA may not unreasonably refuse to award a competitive cable television franchise.<sup>9</sup>

A cable franchise functions as a contract between the local government, operating as the local franchising authority, and the cable operator. Like other contracts, its terms are reasonably negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process. However derived, whether requested by the local government or offered by the cable operator, once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

The City is authorized to regulate the construction, installation, operation and maintenance of Cable Television Systems pursuant to federal, state and local law. The City's franchise provides that changes in law which affect the rights or responsibilities of either party under the Franchise agreement will be subject to and shall be governed by the Communications Act, and any other applicable provision of federal, state or local law.

### **Public Hearing**

Local government officials encourage competition and new technologies since competing technologies and companies result in tangible benefits to the City and its residents. Public hearings provide an opportunity for residents, government officials and providers to voice their interests and concerns.

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<sup>6</sup> See 47 U.S.C. §541(d).

<sup>7</sup> See Ordinance No. 98-23 of the City of Lake Worth Code of Ordinances (“Franchise”).

<sup>8</sup> See 47 U.S.C. § 521.

<sup>9</sup> See 47 U.S.C. § 541(a)(1).

Florida law requires that no local government may grant a cable franchise unless it does so after holding a public hearing in which it considers the economic impact upon private property, the public need for the franchise, the capacity of the public rights of way to accommodate the system, the present and future use of the public rights of way to be used by the cable system, the potential disruption to existing users of the rights of way, the financial ability of the franchise applicant to perform, societal interests generally considered in cable television franchising, and any other substantive or procedural matters which may be relevant to consider.<sup>10</sup>

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequently additional obligations on the local government. For instance, in the City of Lake Worth cable franchises are approved by Resolution. The City's Ordinance provides:

*Notice of public hearing.* The resolution of necessity shall set a reasonable time and place for a hearing to be held before the City Commission to hear and consider objections to and protests against the construction and installation of the proposed improvements. Notice of such public hearing shall be given by publication of a notice in one (1) issue of a newspaper of general circulation within the city, and shall generally state the nature of the proposed project and the intent of the City Commission to assess any or all of the project costs against property not owned by the City. The City clerk shall cause a copy of the published notice to be mailed to the owners of property to be assessed, the names and addresses of such property owners to be obtained from the records of the property appraiser or from such other sources as the City clerk or engineer deems reliable.

### **Local Franchising/Local Oversight**

If telephone providers, such as SBC, AT&T and Verizon are permitted to offer cable service without first obtaining a cable franchise from an LFA, these providers will be exempt from local oversight and will be less accountable to the local communities in which they operate than the cable systems with which they will be competing. This would be competitively unfair and harmful to local communities and their residents who would lose the ability to manage the rights of way. Such local oversight provides important consumer and public protections.

The City is the most familiar with the local needs of its residents. Establishing and ensuring compliance with local building and zoning codes, and public safety regulations are performed at a local level. For example, the City's Cable Ordinance provides,

All of Company's plant and equipment, including, but not limited to, the antenna site, headend and distribution system, towers, house connections, structures, poles, wire, cable coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to

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<sup>10</sup> See Fla. Stat. § 166.046(2).

endanger or interfere with improvements the City may deem appropriate to make or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

Company shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

Company shall obtain all required permits from the City before commencing any work requiring a permit, including the opening or disturbance of any street, or public property or public easement within the City. Company shall strictly adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the system in the City.

The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Franchise and to make such tests (at its own expense) as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.

Repair of Streets and Property. Any and all streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the system shall be promptly repaired by Company, at its expense, to a condition as good as that prevailing prior to Company's construction. The City shall have the right to require that it approve repairs performed by Company pursuant to this Section; such approval shall not be unreasonably withheld. Company shall warranty such repairs for a period of one (1) year from the date of completion.<sup>11</sup>

Accordingly, the Commission cannot bypass the City's franchising process by considering establishing rules applicable only to telephone companies seeking to use the City's rights of way to offer a video product. The effect of these rules would be to usurp the statutory process established by Congress for cable franchise renewals to ensure that local needs are met.

### **Florida's Level Playing Field Statute**

The public policy of the State of Florida is that cable television LFAs should grant overlapping franchises under terms and conditions which are not more favorable or less burdensome than those of other franchises.<sup>12</sup> Furthermore, section 166.046(5) provides "Nothing in this section shall be construed to prevent any...city considering the approval of an additional cable service franchise in all or any part of the area of such...city from imposing additional terms and conditions upon the granting of such franchise as such...city shall in its sole discretion deem necessary or appropriate."

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<sup>11</sup> See Ordinance No. 98-23 of the City of Lake Worth Code of Ordinances ("Franchise").

<sup>12</sup> See Fla. Stat. § 166.046(3).

## **Cable Franchising in the City of Lake Worth, Florida**

### **Community Information**

The City of Lake Worth has a population of approximately 35,600 people. The City's franchised cable provider is Adelphia Communications Corporation. On October 4, 2005, the City consented to the sale and assignment of the Adelphia cable television Franchise to Parnassos, L.P., a subsidiary of Comcast.

### **Competitive Cable Systems**

The City does not have competitive cable systems.

### **Lake Worth's Current Franchise**

The City granted a franchise to Adelphia in June, 1998 for a term of ten years, which expires in June, 2008. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, the City is currently in the renewal window and will be negotiating a franchise renewal with the incumbent provider.

Because service issues are local, customer service must be handled at the local level. These complaints are made and addressed within the community. There are thousands of customer service complaints across the country, which are addressed at the local level. The State or the Commission is simply not equipped with handling the sheer number of these customer service complaints.

The City's Franchise provides that the Franchisee agrees to comply with and to implement and maintain any practices and procedures that may be required to monitor compliance with customer service requirements. The Franchise provides that the Franchisee comply with the minimum standards set forth in the rules and regulations of the FCC regarding consumer service and customer protection.<sup>13</sup>

With respect to enforcement remedies for violations of customer service provisions, the current Franchise provides for a fine in the amount of \$50.00 per day for each day the violation continues.

### **Franchise Renewal**

Similar to transfer authority, renewal authority is a critical local government function. One of the stated purposes of the Communications Act is to "establish an orderly process for franchise renewal which protects cable operators against unfair denials where operators' past performance and proposal for future performance meet the standards established by the

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<sup>13</sup> See Ordinance No. 98-23 of the City of Lake Worth Code of Ordinances ("Franchise").

Communications Act."<sup>14</sup> Once a renewal proposal has been submitted § 546(c) permits the franchising authority four months to make a decision regarding whether to grant or deny a renewal.

In circumstances where a cable franchising authority stalls or frustrates the orderly process under 47 U.S.C. § 546 to the detriment and prejudice of a cable operator, a district court has equitable power to require the franchising authority to continue to honor the original franchise agreement pending completion of the § 546 process. Finally, § 546(h) provides that judicial review is available for any “final” decision made by a franchising authority through the “informal” franchise-renewal process.

During a renewal process, LFAs are entitled to ask the Franchisee to submit proposals for how its system would be upgraded, and examine, in light of community needs, the quality of the Franchisee’s service, including signal quality, response to consumer complaints, and billing practices.

The City is currently in the renewal window, thus, the City has the opportunity to negotiate the renewal only if the City maintains franchising authority. The City’s existing Franchise commenced in 1998. There have been significant changes in technology, demographics, federal and state law since the Franchise agreement was negotiated. Therefore, the City would have the opportunity to negotiate benefits such as stronger customer service standards and enforcement remedies, security/performance bond, increased insurance requirements, a capital grant for PEG support for equipment and facilities, service to schools and build out requirements and a state-of-the-art provision. Furthermore, outdated franchise provisions can be updated addressing the City’s cable related needs considering changing technology and demographics.

## **PEG**

A franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator’s proposal for a franchise renewal, that channel capacity be designated for public, educational, or governmental use, channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this section.<sup>15</sup>

Accordingly, LFAs have the right to establish franchise requirements regarding channel capacity for government and education access programming. Furthermore, an LFA may require assurances that the cable provider will provide adequate educational and government access channel capacity, facilities, and financial support.

Although the City’s Franchise provides that the City is entitled to a channel, the City does not have the resources to purchase the necessary equipment to operate a channel. The City will have the opportunity to negotiate for a capital grant to fund a PEG channel, to satisfy its community needs during its upcoming renewal negotiations.

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<sup>14</sup> See 47 U.S.C. §521(5).

<sup>15</sup> See 47 U.S.C. § 531(b).

The Company shall make available for non-exclusive use by the City, without charge, a minimum of one (1) activated channel solely for non-commercial governmental programming, non-commercial public access programming and non-commercial educational programming.

The Company may use the access channel required in paragraph A for any programming during those hours when the channel is not in use by the general public, local educational authorities or local government.

### **Service to Public Buildings**

The City's Franchise contains the following requirements: "Company shall provide a minimum of one (1) cable modem access in each city-owned building, when modems become commercially available in the City."

### **Build Out**

Build out requirements ensure that there is a simple, objective, easily administered test of economic feasibility as to where cable service has to be available. Having a clear test helps to ensure that the cable company's facilities are extended into all neighborhoods meeting this test and that service is offered to all residents in such neighborhoods, regardless of race, age, income or other extraneous factors.

Since the test must be locally tailored so as to take into account local geography, demographics, and other factors which affect population density and ability to provide service, a test applied statewide or nationally would be ineffective. Since the rights of way are public property, maintained using public funds, the rights of way cannot be used in a discriminatory fashion. It is the City's responsibility to ensure that public property is used to provide service wherever there is sufficient population density.

Finally, the City has a duty to ensure that modern communications services are offered broadly to as large a number of the residents of the City as reasonably possible, without regard to age, race, and income or other improper service criteria.

### **Insurance Requirements**

The City has a duty to protect its residents by ensuring that obligations are met and injured members of the community are compensated if the provider should encounter financial difficulties or file for bankruptcy. The City's Franchise agreement contains the following insurance requirements:

- \$1,000,000.00 - \$3,000,000 for bodily injury or death
- Company shall provide the City with copies of evidence of insurance providing the coverage
- Workers' Compensation insurance as required by State law



The City has no Security Fund and Construction Bond requirements. As discussed, these are two critical issues to be addressed during the renewal negotiations.

### **Franchise Fees**

With respect to payments by a franchisee, the Cable Act permits LFAs to collect up to 5% of gross revenues from cable providers as compensation for the use of public rights-of-way. However, in 2001, the State of Florida adopted the Florida Communications Services Tax (“CST”) Simplification Act, which superseded and preempted the authority of municipalities and counties in Florida to directly levy or collect cable television franchise fees.<sup>16</sup>

Under the CST, providers of cable, telephone and other communications services remit the communications tax directly to the Florida Department of Revenue, which takes an administrative fee and remits the balance to the respective LFAs. Rates were established by the State for each taxing jurisdiction based upon historical revenues under prior franchise fee and taxing schemes with the intent that the jurisdictions would not receive net returns significantly different than they received collectively from the prior distinct funding sources.

### **Enforcement Mechanisms**

The enforcement mechanisms below are so minimal as to not necessarily be meaningful. Accordingly, the City intends to negotiate stronger provisions in the upcoming renewal negotiations. The Franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its Franchise agreement:

1. In the event of a failure to provide upon written request, data, documents, reports, information, or to cooperate with the City during an application process or cable system review, the Company shall pay Fifty Dollars (\$50.00) per day, or part thereof, for each violation that occurs or continues.
2. In the event of a failure to provide in a continuing manner the types of services required under this Franchise, unless the City Commission specifically approves for Company a delay or change, or the Company has obtained modification of its obligation under Section 525 of the Cable Communications Policy Act of 1984, the Company shall pay to the City One Hundred Dollars (\$100.00) per day for each day or part thereof, that each non-compliance continues.
3. In the event that forty-five (45) days following adoption of a resolution by the City Commission determining a failure of the Company to comply with operational maintenance standards, the Company shall pay to the City One Hundred Dollars (\$100.00) for each day, or part thereof, that such non-compliance continues.

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16 See Fla. Stat. §§ 202.13(3), 202.20(2)(b)(1)(b), and § 202.24(1).

4. In the event of a failure to provide, upon request, data, documents, reports, information, or to cooperate with the City during an application process or Cable System review, or to materially comply with Subscriber Service provisions contained in Section 8 of this Franchise, Company shall pay Fifty Dollars (\$50.00) per day, or part thereof, for each violation that occurs or continues.

As previously stated, neither the State nor the Commission has the staff or the budget to respond to violations in a timely manner. In reality, City hall gets the telephone calls from the local residents, not the FCC. The City needs and expects a timely response to protect public safety and to ensure local service issues are handled in a timely manner.

### **Responses/Comments to the Notice of Proposed Rulemaking**

**The Commission does not have the legal authority to issue rules which preempt LFAs authority.**

Providers seeking to provide multichannel video service over upgraded local wireline networks have alleged that the local franchising process serves as a barrier to entry. Accordingly, the FCC seeks comment on how it should implement 47 U.S.C. § 541(a)(1), which provides that a franchising authority may not unreasonably refuse to award an additional competitive franchise. The City respectfully asserts that the Commission should not adopt rules which would preempt its duly-adopted Cable Television Ordinance, since to do so would conflict with Congress' intent and exceed the Commission's Congressionally-delegated authority. Any proposed Commission rule which interfere with the City's Congressionally-granted authority. The Cable Act states, in relevant part:

Nothing in this subchapter shall be construed to affect any authority of any State, political subdivision, or agency thereof, or franchising authority, regarding matters of public health, safety, and welfare, to the extent consistent with the express provisions of this subchapter [nor] to restrict a State from exercising jurisdiction with regard to cable services consistent with this subchapter.<sup>17</sup>

It was the intent of the Cable Act to "preserve the critical role of municipal governments in the franchise process, while providing appropriate deregulation in certain respects... [and that] the franchise process take place at the local level where city officials have the best understanding of local communications needs and can require cable operators to tailor the cable system to meet those needs."<sup>18</sup> Moreover, Congress provided that where LFAs treated franchisees unreasonably, franchisees had the right to seek judicial relief.<sup>19</sup> Congress did not authorize the Commission to make rules preempting local laws which are not inconsistent with the Act, nor inserting itself into the local franchise negotiation process. Thus, any proposed Commission rule which would circumvent this process would be counter to Congress' express intent that franchising take place at the local level and that any unreasonable denials are reviewed by the judiciary.

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<sup>17</sup> See 47 U.S.C. § 556(a)&(b).

<sup>18</sup> See NPRM at n. 18, citing, H.R. Rep. No. 98-934 (1984).

<sup>19</sup> See 47 U.S.C. § 555(a).

## **The local franchising process is not unreasonably causing refusals of competitive franchise grants.**

New providers, including Verizon AT&T and SBC are seeking to provide multichannel video service over upgraded local wireline networks so that they can offer a competitive “triple play” (voice, Internet and video) to cable operators’ triple play. These providers want to circumvent the Cable Act’s local cable franchising process via federal and state legislation and via Commission rules as reflected in this NPRM.

In Florida, these new providers, as telephone companies, have the legal right and ability to deploy an advanced network.<sup>20</sup> However, in order to offer the video component, LFAs require a franchise agreement. In fact, a number of years ago, BellSouth had obtained a number of cable franchises which the company failed to build. Therefore, BellSouth never offered cable service even though they held a number of cable franchises.

For example, Verizon has stated that it will deliver its FiOS television service by constructing the system primarily as a telephone system, not subject to cable television franchise authority. Verizon argues that it may begin FTTP system construction at will, even in communities where it is not actively seeking a cable television franchise, because the system will be used to provide voice and data services, which is not regulated by cable television ordinances, regardless of a cable franchise. Therefore, Verizon has been deploying its FTTP network without having yet obtained video franchises from many of the LFAs in the communities in which they are building. In those communities, it can market and use this network to bring its phone and high-speed data products to consumers, and include its wireless product in the bundle. Its video product can join that bundle as Verizon obtains franchise agreements, but there is no legal impediment to construct and begin deriving income from its advanced system while it negotiates video franchise agreements with LFAs.

Thus, these new providers, as telephone companies have an advantage over cable providers since the telephone companies have independent right of way authority and may begin construction or upgrade their facilities without LFA regulation. However, cable operators are not permitted to begin system construction until the franchise agreement is negotiated and finalized.

## **Build-Out Requirements and Red-Lining**

Build out requirements encourage competition and prevent red-lining of communities since these requirements prevent profit optimization by denying new providers the ability to select areas where high-margin customers may reside. LFAs have a congressionally-mandated duty to manage the rights of way to ensure certain members of the community are not denied access to service due to their race or income levels. Accordingly, a Commission rule preventing LFAs from imposing build-out requirements could perpetuate redlining.

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<sup>20</sup> See Fla. Stat. §337.401.

## **The City's response to Verizon's arguments**

Verizon has stated that the local franchising process takes too long due to inertia, arcane application procedures, bureaucracy or inattentiveness by LFAs arguing that it would have to negotiate with 10,000 LFAs in order to offer video service in its current service area. However, entrants, such as Verizon, with multi-use systems have two other options to offer video service without obtaining a franchise from LFAs: satellite and OVS. Furthermore, in the case of obtaining a franchising agreement for use of the rights of way, in Florida, Verizon will be able to reach a significant number of the population by dealing with a relative few LFAs with jurisdiction over the State's various areas of dense population.

Verizon also argues that that local franchising requirements can result in "outrageous demands by some LFAs" wholly unrelated to video services or franchising rationale. However, it is evident that the City's franchising process, with Adelphia illustrates that the parties were able to negotiate in good faith over the exact levels of support to be provided to the City and part of that process was the County's willingness to set forth its justifications for the requests being made.

Elected officials hear from all interested parties, and make a balanced judgment as to what level of support will be required, taking into account the LFA's future cable-related community needs and the provider's ability to make a reasonable profit on its investment in the community.

## **Conclusion**

The City disagrees with the Commission's tentative conclusion that the FCC has the authority to ensure that LFAs not "unreasonably refuse" to award competitive franchises. Congress did not grant the Commission jurisdiction to directly implement §541(a)(1). Accordingly, the Commission does not have enforcement authority since this is a function of the federal judiciary.

As to whether the Commission should address actions at the state level if they are deemed to be unreasonable barriers to entry, the City opposes any such state legislation. There are adequate judicial remedies to redress any unreasonable barriers to entry. The Commission has no authority to preempt state statutes as the NPRM suggested.

Finally, the City agrees with the Commission's tentative conclusion, that it is not unreasonable for an LFA, in awarding a franchise, 1) to assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides; 2) allow a cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area, and 3) require adequate assurance that the cable operator will provide adequate access channel capacity, facilities, or financial support.

The City is concerned that its authority as an LFA not be decreased, either by FCC rule or by the Florida Legislature. Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way

are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner in accordance with local requirements. Local cable franchising also ensures that the City's specific needs are met and that local customers are protected.

In light of the foregoing, the City respectfully requests that the Commission does not interfere with local government authority over franchising or otherwise impair the operation of the local franchising process as set forth under existing federal law with regard to either existing cable service providers or new entrants. The Commission should not permit providers to simply circumvent the local franchising process.

Respectfully submitted this 10<sup>th</sup> day of February, 2006

**The City of Lake Worth, Florida**



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ORDINANCE NO. 98-23 OF THE CITY OF LAKE WORTH, FLORIDA, GRANTING A FRANCHISE AGREEMENT TO COMCAST CABLEVISION OF WEST PALM BEACH, INC., ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF LAKE WORTH, FLORIDA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION AND USE OF THE COMMUNITY ANTENNA TELEVISION SYSTEM; AND PRESCRIBING PENALTIES FOR VIOLATION OF THE FRANCHISE PROVISIONS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF LAKE WORTH, FLORIDA, THAT:

#### SECTION 1. STATEMENT OF INTENT AND PURPOSE

1.01 Statement of Intent and Purpose. The City of Lake Worth and Comcast Cablevision of West Palm Beach intend, by the adoption of this Franchise Agreement (referred to herein as the ("Franchise" or the "Agreement")), to bring about the development and operation of a cable television system. This development can contribute significantly to the communication needs and desires of many individuals, associations, and institutions.

#### SECTION 2. DEFINITIONS

For the purpose of this Franchise, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense, include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

2.01 "Basic Service" means a group or groups of Cable Services distributed over the cable system consisting of any service tier which includes the retransmission of local television broadcast signals.

2.02 "Cable Act" means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 521 et seq (1992), and as those acts may hereinafter be amended.

2.03 "Cable System" or "System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple subscribers within the City, but such term does not include (A) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (B) a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities crosses or uses any public right-of-way, including streets or easements; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility systems.

2.04 "Cable Service" means (i) the one-way transmission to subscribers of video programming or other programming service; and (ii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

2.05 "Channel" means a band of frequencies in the electromagnetic spectrum, or any other means of transmission (including, without limitation, optical fibers or any other means now available or that may become available), which is capable of carrying a video signal, an audio signal, a voice signal, or a data signal.

2.06 "City" means the City of Lake Worth or, as appropriate in the case of specific provisions of this Franchise, any board, bureau, authority, agency, commission, department of, or any other entity of or acting on behalf of, the City of Lake Worth or any officer, official, employee, or agent thereof, the designee of any of the foregoing, or any successor thereto.

2.07 "City Commission" means the governing body of the City.

2.08 "Complaint" means any written inquiry, allegation or assertion made by a subscriber which raises an objection to the business practices of Company. The term "Complaint" does not include an inquiry which is immediately answered by the Company.

2.09 "Converter" means an electronic device with an appropriate Channel selector that permits a subscriber to view all signals delivered at designated Converter dial locations.

2.10 "Drop" means the cable that connects the subscriber terminal at a point in the subscriber's home, designated by the subscriber, to the nearest feeder cable of the system.

2.11 "FCC" means the Federal Communications Commission, its designee, or any successor thereto.

2.12 "Company" means Comcast Cablevision of West Palm Beach, Inc. a Delaware corporation, with offices located at 1401 Northpoint Parkway, West Palm Beach, Florida 33407.

2.13 "Gross Revenues" means all revenues actually collected by the Company relating to the provision of Cable Services, including subscriber revenues and non-subscriber revenues, which includes local advertising revenues and home shopping commissions. Gross Revenues does not include revenues relating to the provisions of any telephone or data services.

2.14 "Installation" means the act of connecting the system from the feeder cable to the subscriber terminal so that cable television service may be received by the subscriber.

2.15 "Pay Television" means the delivery over the system of per-channel or per-program audio-visual signals to subscribers for a fee or charge.

2.16 "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.

2.17 "Public Property" means any real property, other than a street, owned by any governmental unit.

2.18 "Service" means only Cable Service, including any Basic service, whether originated by the Company or any other person, which is distributed over, the Cable System.

2.19 "Signal" means any transmission of radio frequency energy or of optical information.

2.20 "Street" means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive or any public easement or right-of-way now or hereafter held by the City which shall entitle Company to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a system.

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2.21 "Subscriber" means any person or entity who lawfully subscribes to any cable service whether or not a fee is paid for such service.

SECTION 3. GRANT OF AUTHORITY AND GENERAL PROVISIONS.

3.01 Grant of Franchise. This Non-Exclusive Franchise is granted pursuant to the terms and conditions contained herein. Such terms and conditions shall be subordinate to all applicable provisions of state and federal laws, rules, and regulations.

3.02 Authority for Use of Public rights-of-way and utility easements.

A. For the purpose of constructing, operating, and maintaining a Cable System in the City, so as to allow for the provision of television signals to Subscribers, Company may erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across and along the streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with. The Company agrees that all such areas shall be restored to reasonable condition within a reasonable time.

B. Company shall construct and maintain the System so as not to interfere with other uses of the public rights-of-way and utility easements. Company shall endeavor to make use of existing poles and other facilities available to Company where feasible. Except in cases of emergency, Company shall use all reasonable efforts to notify all residents affected by proposed work not less than 48 hours prior to commencement. Such notice shall include the Company's telephone number and the department to call regarding questions about the construction.

3.03 Nature of Franchise. Upon acceptance, the Company's existing nonexclusive franchise for the occupation and use of the streets within the City for the construction, operation, maintenance, upgrade, repair, and removal of the system in accordance with the provisions of this Franchise shall be deemed to have been renewed.

3.04 Franchise Term. This Franchise shall commence upon acceptance by Company as defined herein and shall be in full force and effect for a period of ten (10) years unless renewed, revoked or terminated sooner as herein provided.

3.05 Area Covered. This Franchise is granted for the territorial boundary of the City and for any area henceforth added thereto during the term of the Franchise.

3.06 Use of Grantee Facilities. The City shall have the right to install and maintain free of charge, upon the poles and within the underground pipes and conduits of Company, any wires and fixtures desired by the City to the extent that such installation and maintenance does not interfere with existing and future operations of Company and provided such wires and fixtures are not used to deliver cable services to subscribers within the City.

3.07 Written Notice. All notices, reports or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to the person designated below, or when five (5) days have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to City: City of Lake Worth  
City Hall - Attn: City Manager  
7 North Dixie Highway  
Lake Worth, Florida 33460

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If to Company: Comcast Cablevision of West Palm Beach, Inc.  
1401 Northpoint Parkway  
2<sup>nd</sup> Floor  
West Palm Beach, FL 33407

With Copy to: City Attorney  
7 North Dixie Highway  
Lake Worth, Florida 33460

Such addresses and phone numbers may be changed by either party upon notice to the other party given as provided in this section.

3.08 Franchise Non-Exclusive. To the extent permitted or required by law, this Franchise is non-exclusive. However, no cable system provider shall have the right to provide any comparable services upon terms more favorable or less burdensome than those applicable to the provision of such service by the Company. In the event that federal or state laws are amended during the term of this Franchise, to permit (but not require) exclusivity, it is the intent of the parties that the provisions of this Franchise regarding non-exclusivity shall remain in full force and effect.

#### SECTION 4. DESIGN PROVISIONS.

##### 4.01 System Design.

A. If system upgrades are contemplated during the Franchise term, Company shall provide the City with (1) a full description of the System proposed for construction and (2) upon completion of the System upgrade, maps for the System upgrade.

B. Channel Capacity. Company shall at all times throughout the term of the Franchise, at a minimum, provide at least sixty-two (62) activated downstream channels. In the event that the Company decides to upgrade the Cable System at any time throughout the term of the Franchise, it shall also agree to provide one (1) upstream channel which may be used for the purpose of interconnecting public buildings within the City.

C. Closed Captioning. All video signals received for transmission that contain closed circuit captioning information for the hearing impaired shall in turn contain such information in the form received when transmitted by the cable operator to the subscribers of the system in the form received from the video suppliers. In addition, Company agrees to comply with the provisions of Federal, state and local laws concerning handicapped or disabled persons and shall indemnify and hold the City harmless from any suit, claim or demand against it for violation of such laws which may arise in connection with the Company's provision, or failure to provide services in conformity with such laws.

D. Stereo Signals. Company's System shall be capable of transmitting, and shall transmit to subscribers any stereo signals received and carried by the System.

4.02 Provision of Service. The Company shall provide Cable Service throughout entire City within the territorial limits of the City.

4.03 Technical Standards. The system shall be designed, constructed and operated so as to meet or exceed those technical standards promulgated by the Federal Communications Commission relating to Cable Systems contained in subpart K of part 76 of the Federal Communications Commission's rules and regulations as may from time to time be amended.

4.04 Special Testing. The Company shall only be required to conduct such tests as required by the Federal Communications Commission. No other testing shall be required of Company. The City shall be free to conduct its own testing as it deems is warranted, and at its own expense, but such testing shall have no bearing on Company's status as franchisee unless such test requirements are no longer preempted by the Federal Communications Commission.

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4.05 Signal Quality. The system shall produce a picture that is consistent with Federal Communications Commission standards.

## SECTION 5. SERVICE PROVISIONS.

5.01 Programming Decisions. All programming decisions shall be at the sole discretion of Company so long as consistent with rules and regulations of the Federal Communications Commission and applicable federal law. Company agrees to use reasonable efforts to maintain programming services at a level then prevailing in the cable television industry, to the extent economically and technically feasible.

### 5.02 Access Channels.

A. The Company shall make available for non-exclusive use by the City, without charge, a minimum of one (1) activated channel solely for non-commercial governmental programming, non-commercial public access programming and non-commercial educational programming.

B. The Company may use the access channel required in paragraph A for any programming during those hours when the channel is not in use by the general public, local educational authorities or local government.

C. No charges may be made for channel time or playback of locally produced live or pre-recorded programming on the access channel required in paragraph A including character generated message board when utilized for non-commercial governmental programming, non-commercial public access programming or non-commercial educational programming.

D. Whenever the access channel required in paragraph A is in use for unduplicated, locally produced live programming for six (6) hours per day, six (6) days per week, for six (6) weeks running, demand for a full-time channel shall be presumed and Company shall refrain from further use of said channel for programming other than that designated by franchise.

E. The City shall establish rules pertaining to the administration of the access channel required in paragraph A. Such rules shall be consistent with the terms and provisions of the Cable Act.

F. Company shall provide a minimum of one (1) cable modem access in each city-owned building, when modems become commercially available in the City.

5.03 Company shall maintain an office in the general area which will be open during usual and customary business hours. Company shall maintain a toll free telephone number to be operated so that complaints and requests for repairs and adjustments may be made twenty-four (24) hours a day.

## SECTION 6. CONSTRUCTION PROVISIONS.

### 6.01 Construction Standards.

A. All construction practices shall be in accordance with all applicable sections of federal law, including but not limited to the Occupational Safety and Health Act of 1970, as amended, as well as all state and local codes where applicable.

B. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code, as amended.

C. Whenever applicable, antennas and their supporting structures (tower) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, state or local laws, codes and regulations.

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D. All of Company's plant and equipment, including, but not limited to, the antenna site, headend and distribution system, towers, house connections, structures, poles, wire, cable coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the City may deem appropriate to make or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

E. Company shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

#### 6.02 Construction Codes and Permits.

A. Company shall obtain all required permits from the City before commencing any work requiring a permit, including the opening or disturbance of any street, or public property or public easement within the City. Company shall strictly adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the system in the City.

B. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Franchise and to make such tests (at its own expense) as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.

6.03 Repair of Streets and Property. Any and all streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the system shall be promptly repaired by Company, at its expense, to a condition as good as that prevailing prior to Company's construction. The City shall have the right to require that it approve repairs performed by Company pursuant to this Section; such approval shall not be unreasonably withheld. Company shall warranty such repairs for a period of one (1) year from the date of completion.

6.04 Use of Existing Poles. Company shall exercise all reasonable efforts to negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction. Company shall not erect, for any reason, any pole on or along any public rights-of-way and utility easements in an existing aerial utility system without the advance written approval of the City Commission, which approval shall not be reasonably withheld.

6.05 Undergrounding of Cable. Cable shall be installed underground at Company's expense where either the existing telephone and electrical utilities are already underground. Company shall place cable underground in newly platted areas in concert with both the telephone and electrical utilities. In the event that telephone or electric utilities are reimbursed by the City or any agency thereof for the placement of cable underground or the movement of cable, Company shall be reimbursed upon the same terms and conditions as the telephone or electric utilities.

#### 6.06 Reservation of Public Rights-of-way and Utility Easements.

A. Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

B. All such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of Company.

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C. If any such property of Company shall interfere with the construction or relocation, maintenance or repair of any street or public improvement, whether it be construction, repair, maintenance, removal or relocation of a sewer, public sidewalk, or water main, street or any other public improvement, thirty (30) days notice shall be given to Company by the City and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by Company in such manner as shall be directed by the City so that the same shall not interfere with the said public work of the City, as determined by the City, and such removal or replacement shall be at the expense of Company herein. Should, however, any utility company be reimbursed for relocation of its facilities as part of the same work that requires Company to remove its facilities, Company shall be reimbursed upon the same terms and conditions as utilities.

D. Nothing contained in this Franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring Company's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

6.07 Trimming of Trees. Company shall have the authority to trim trees upon and hanging over public streets, public alleys, public sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of Company; provided, however, all trimming shall be done, at the expense of Company, under the supervision and direction of the City and shall be done in such a way as to preserve the trees and maintain a reasonable appearance of the trees.

6.08 Movement of Facilities. In the event it is necessary temporarily to move or remove any of Company's wires, cables, poles, or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets of the City, upon two (2) weeks notice by the City to Company, Company shall move at the expense of the person requesting the temporary removal of such of his facilities as may be required to facilitate such movements. Any service disruption provisions of this Franchise shall not apply in the event that the removal of Company's wires, cables, poles or other facilities results in temporary service disruptions.

## SECTION 7. OPERATION AND REPORTING PROVISIONS.

### 7.01 Open Books and Records.

A. The City shall have the right to inspect and/or audit, upon two (2) weeks written notice, at any time during normal business hours at the system office all books, records, maps, plans, financial statements, service complaint logs, performance test results, record of requests for service and other like materials of Company which are reasonably necessary to monitor compliance with the terms of this Franchise. Company shall first be given two (2) weeks written notice of the inspection and/or audit request, the description of and purpose for the inspection and/or audit and description, to the best of the City's ability, of the books, records, documents and equipment it wants to inspect and/or audit. All costs incurred in connection with the performance of an inspection and/or audit shall be borne by the City.

B. In the event that the City undertakes performance of an audit in connection with the payment of franchise fees by the Company to the City and said audit shows a discrepancy in fees paid and fees owed in excess of five percent 5%, then all costs and fees incurred in connection with the performance of such audit shall be borne by the Company, together with payment of any shortfall discovered during the audit and interest thereon at the legal rate.

7.02 Communications with Regulatory Agencies. Copies of all petitions, applications, communications and reports submitted by Company or on behalf of or relating to Company to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting the system authorized pursuant to this Franchise shall be sent to the City upon request. Copies of responses from the regulatory agencies to Company shall likewise be sent to the City upon request.

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## SECTION 8. SUBSCRIBER SERVICE PROVISIONS

Company agrees that it shall comply with the standards of the National Cable Television Association. Company agrees that it shall also comply with the minimum standards set forth in the rules and regulations of the FCC regarding consumer service and customer protection, including but not limited to the following:

8.01 Schedule of Charges. Company shall upon request provide to the City a current schedule of all rates and charges.

### 8.02 Subscriber Complaint Resolution Procedures

A. Company shall design, implement, and notify the City and subscribers of subscriber complaint resolution procedures in accordance with the Rules and Regulations of the FCC.

B. Company shall maintain records pertaining to Company's receipt of subscriber complaints in accordance with the Rules and Regulations of the FCC.

8.03 Subscriber Service Procedures. Company shall design, implement and notify the City of service procedures in accordance with the Rules and Regulations of the FCC.

8.04 Subscriber Notification Procedures. Company will provide subscribers with notifications in accordance with the Rules and Regulations of the FCC.

8.05 Subscriber Billing Procedures. Company will provide subscribers with written information regarding billing procedures in accordance with the Rules and Regulations of the FCC.

8.06 Parental Control Option. Company shall provide parental control devices to all subscribers who wish to be able to block any channel(s) of programming from the cable service entering the subscriber's home.

## SECTION 9. GENERAL FINANCIAL AND INSURANCE PROVISIONS

### 9.01 Payment to City

A. Company shall pay to the City a franchise fee equal to five percent (5%) of its annual Gross Revenues.

B. Payments due the City under this provision shall be computed at the end of each calendar quarter for that period. Payments shall be due and payable for each quarterly period within forty-five (45) days following the close of the period. Each payment shall be accompanied by a brief report showing the basis for the computation. All such reports shall be certified by the Company.

C. The Company shall pay to the City a non-refundable application or renewal filing fee, as the case may be, of One Thousand Five Hundred Dollars (\$1,500.00) by certified check or cashier's check made payable to the City. Such filing fee may not be deducted from any franchise fee imposed under this Franchise.

### 9.02 Violations of Franchise

A. Whenever the City finds that Company has allegedly violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Company. The written notice shall describe in reasonable detail the alleged violation so as to afford Company an opportunity to remedy the violation. Company shall have thirty (30) days subsequent to receipt of the notice in which to either correct the violation or diligently be acting toward correction of the problem. Company may, within ten (10) business days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Company to the City shall specify with particularity the matters disputed by Company and shall stay the running of the above described time.

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1. The City shall hear Company's dispute at a regularly or specially scheduled meeting. Both parties, City and Company, shall have the right to subpoena and cross-examine witnesses. The City shall determine if Company has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Company may petition for reconsideration.

2. If after hearing the dispute the claim is upheld by the City, Company shall have thirty (30) days from such a determination to remedy the violation or failure.

B. The time for Company to correct any alleged violation may be extended by the City if the necessary action to correct the alleged violation is of such a nature or character to require more than thirty (30) days within which to perform, provided Company commences the corrective action within the thirty (30) day period and thereafter uses reasonable diligence to correct the violation.

C. In accordance with the procedures set forth in this Section 9.02:

1. In the event of a failure to provide upon written request, data, documents, reports, information, or to cooperate with the City during an application process or cable system review, the Company shall pay Fifty Dollars (\$50.00) per day, or part thereof, for each violation that occurs or continues.

2. In the event of a failure to provide in a continuing manner the types of services required under this Franchise, unless the City Commission specifically approves for Company a delay or change, or the Company has obtained modification of its obligation under Section 625 of the Cable Communications Policy Act of 1984, the Company shall pay to the City One Hundred Dollars (\$100.00) per day for each day or part thereof, that each noncompliance continues.

3. In the event that forty-five (45) days following adoption of a resolution by the City Commission determining a failure of the Company to comply with operational, maintenance standards, the Company shall pay to the City One Hundred Dollars (\$100.00) for each day, or part thereof, that such noncompliance continues.

4. In the event of a failure to provide, upon request, data, documents, reports, information, or to cooperate with the City during an application process or Cable System review, or to materially comply with Subscriber Service provisions contained in Section 8 of this Franchise, Company shall pay Fifty Dollars (\$50.00) per day, or part thereof, for each violation that occurs or continues.

#### 9.03 Damages and Defense.

A. Company shall indemnify, defend, and hold harmless the City, its agents and employees for all damages and penalties, at all times during the term of this Franchise, as a result of Company's negligent acts or omissions relating to its operation of the System. These damages and penalties shall include, but shall not be limited to, damages arising out of personal injury, property damage, copyright infringement, defamation, antitrust, errors and omission, theft, and fire. These damages and penalties shall not include damages arising out of any negligent or malicious act or omission on the part of the City, its employees, agents or licensees.

B. In order for the City to assert its rights to be indemnified, defended, or held harmless, the City must:

1. Promptly notify Company of any claim or legal proceeding which gives rise to such right;

2. Afford Company the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of such claim or proceeding; unless, however, the City, in its sole discretion, determines that its interests cannot be represented in good faith by Company in which case the grantee shall be excused from any further obligation to indemnify the City; and

3. Fully cooperate with the reasonable requests of Company, at Company's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph (2) above.

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9.04 Liability Insurance.

A. Company shall maintain, throughout the term of the Franchise, liability insurance insuring Company and the City, which shall be an "additional named insured", with regard to all damages mentioned in paragraph A of Section 9.03 hereof, in the minimum amounts of:

1. One Million Dollars (\$1,000,000.00) for bodily injury or death to any one (1) Person;
2. Three Million Dollars (\$3,000,000.00) for bodily injury or death resulting from any one accident;
3. Three Million Dollars (\$3,000,000.00) for all other types of liability.

B. Company shall provide the City with copies of evidence of insurance providing the coverage required by Paragraph A. Insurance shall be written with a company or companies acceptable to the City Finance Director and the City Attorney.

C. In the event of cancellation or material change in the above coverage, the Company will give thirty (30) days written notice of cancellation or material change to City of Lake Worth.

D. Company shall maintain Workers' Compensation insurance as required by State law.

9.05 City's Right to Revoke. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to suspend, revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, in the event that:

A. Company materially breaches this Franchise including, but not limited to any of the following circumstances, each of which shall constitute a material breach of the Franchise:

1. If the Franchise was fraudulently obtained.
2. If the Franchisee should default in the performance of any material obligations under the Agreement or the ordinance under which this franchise is granted. Within thirty (30) days written notice thereof to the Franchisee, the Franchisee shall be afforded the opportunity to cure such defects.
3. If the Franchisee should fail to provide or maintain in full force and effect the liability and indemnification coverages, or the performance bonds or equivalent as required herein.
4. The Franchisee attempts to dispose of any of the facilities or property of its cable communications system to prevent the City from recovering any payments due or any losses or damages arising out of the Franchise.
5. The Franchisee has transferred or has attempted to transfer ownership or control of the Franchise without necessary prior approval of the City.
6. The Franchisee attempts to evade any material provision of this article or Franchise by a pattern of fraud or deceit; or

B. Company becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt and the Franchisee's creditors or trustee in bankruptcy do not agree to fulfill and be bound by all requirements of this Franchise upon request by the City.

9.06 Revocation Procedures. In the event that the City determines that Company has violated any material provision of the Franchise, or any material applicable federal, state or local law, the City may make a written demand on Company that it remedy such violation and that continued violation may be cause for revocation. If the violation, breach, failure, refusal, or neglect is not remedied within thirty (30) days following such demand or such other period as is reasonable, the City shall determine whether or not such violation, breach, failure, refusal or neglect by Company is due to acts of God or other causes which result from circumstances beyond Company's control. Such determination shall not unreasonably be withheld.

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A. At Company's option, a public hearing shall be held and Company shall be provided with an opportunity to be heard upon fourteen (14) days written notice to Company of the time and the place of the hearing. The causes for pending revocation and the reasons alleged to constitute such cause shall be recited in the notice. Said notice shall affirmatively recite the causes that need to be shown by the City to support a revocation.

B. If notice is given and, at Company's option, after a full public proceeding is held, the City determines there is a violation, breach, failure, refusal or neglect by Company, the City shall direct Company to correct or remedy the same within such reasonable additional time, in such manner and upon such reasonable terms and conditions as City may direct.

C. If after a public hearing it is determined that Company's performance of any of the terms, conditions, obligations, or requirements of Franchise was prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided Company has notified City in writing within thirty (30) days of its discovery of the occurrence of such an event. Such causes beyond Company's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God, civil emergencies and labor strikes.

D. If after notice is given and, at Company's option, a full public proceeding is held, the City determines there was a violation, breach, failure, refusal or neglect, then the City may declare, by resolution, the Franchise revoked and canceled and of no further force and effect unless there is compliance within such period as City may fix, such period not to be less than thirty (30) days.

E. The issue of revocation shall automatically be placed upon the City Commission agenda at the expiration of the time set by it for compliance. The City then may terminate Franchise forthwith upon finding that Company has failed to achieve compliance or may further extend the period, in its discretion.

F. If the City, after notice is given and at Company's option, a full public proceeding is held and appeal is exhausted, declares the Franchise breached, the parties may pursue their remedies pursuant to Franchise or any other remedy, legal or equitable. Company may continue to operate the system until all legal appeals procedures have been exhausted.

#### SECTION 10. FORECLOSURE AND RECEIVERSHIP.

10.01 Foreclosure. Upon the foreclosure or other judicial sale of the system, Company shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Company has taken place. Written request for City approval of such change in control shall be required in accordance with Section 11.02 of this Ordinance.

10.02 Receivership. The City shall have the right to cancel this Franchise subject to any applicable provisions of state and federal law, including the Bankruptcy Act, ninety (90) days after the appointment of a receiver or trustee to take over and conduct the business of Company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said ninety (90) days, or unless:

A. Within ninety (90) days after his election or appointment, such receiver or trustee shall have complied with all the material provisions of this Franchise and remedied all defaults thereunder; and,

B. Such receiver or trustee, within said ninety (90) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

10.03 Abandonment. Company shall not abandon any portion of the system without having first obtained, at least three (3) months prior to abandonment, written approval from the City. Upon said abandonment, Company shall, at Company's expense, unless otherwise agreed by the City, cause the system to be removed from all streets, public and private property, and utility easements as set forth in Section 11 below.

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SECTION 11. REMOVAL, TRANSFER AND PURCHASE.

11.01 Removal After Revocation or Expiration.

A. At the expiration of the present and all subsequent renewal terms for which the Franchise is granted, or upon its revocation, as provided for, Company shall have the right to remove, at Company's expense, all or any portion of the System from all streets and public property within the City. In so removing the System, Company shall refill and compact at its own expense, any excavation that shall be made and shall leave all streets, public property and private property in as good a condition as that prevailing prior to Company's removal of the System, and without affecting, altering or disturbing in any way electric, telephone or utility, cables wires or attachments. The City, or its delegation, shall have the right to inspect and approve the condition of such streets and public property after removal.

B. If Company has failed to commence removal of the System, or such part thereof as was designated within thirty (30) days after written notice of removal is given, or if Company has failed to complete such removal within a reasonable time after written notice of removal is given, the City shall have the right to exercise one of the following options:

1. Declare all right, title and interest to the System to be in the City or its delegator with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it; or

2. Cause the System, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the indemnity and penalty section provided for in the Franchise, or from Company directly.

11.02 Sale or Transfer of Franchise.

A. This Franchise shall not be sold, assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any Person without full compliance with the procedure set forth in this section, provided, however, such prohibition shall not apply to an assignment or transfer to an entity owned or controlled by Comcast Corporation.

B. The provisions of this section shall only apply to the sale or transfer of all or a majority of Company's assets, merger (including any parent and its subsidiary corporation), consolidation, or sale or transfer of stock in Company so as to create a new controlling interest.

1. The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer. A transfer fee of One Thousand Five Hundred Dollars (\$1,500.00) shall be made payable to the City and be furnished with any request for sale, assignment or transfer.

2. The City shall act on the request referenced above within the one hundred twenty (120) day time period set forth in 47 C.F.R. § 76.502.

3. If a public hearing is deemed necessary pursuant to (2) above, such hearing shall be commenced within thirty (30) days of such determination and notice of any such hearing shall be given fourteen (14) days prior to the hearing by publishing notice thereof. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the City.

4. Within thirty (30) days after the closing of the public hearing, the City shall approve or deny in writing the sale or transfer request.

C. In reviewing a request for sale or transfer pursuant to paragraph (A) above, the City may only inquire into the legal, technical, character and financial qualifications of the prospective controlling party, and Company shall assist the City in so inquiring. Upon a demonstration of the transferee's qualifications, as set forth above, the City shall approve the sale/transfer. The City shall not unreasonably delay or withhold its approval. In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signator to this Franchise. For purposes of this section, no assignment, transfer or sale shall occur when the Franchise is transferred

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or sold to a Company owned, managed or controlled by Comcast Cablevision or, any of its subsidiaries, or the assets or stock of the Company are transferred to a financial institution as security for refinancing purposes, provided, however, that Company shall not materially adversely affect the ability of the transferee to comply with the provisions of this Franchise.

## SECTION 12. RIGHTS OF INDIVIDUALS PROTECTED.

12.01 Discriminatory Practices Prohibited. Company shall not deny service, deny access, or otherwise discriminate against subscribers, programmers or general citizens on the basis of race, color, religion, national origin, sex, or age. Company shall comply at all times with all other applicable federal, state and city laws, and all executive and administrative orders relating to non-discrimination.

12.02 Subscriber Privacy. Company shall comply with all privacy provisions of Section 631 of the Cable Act, as amended.

## SECTION 13. MISCELLANEOUS PROVISIONS.

13.01 Compliance with Laws. Company and the City shall conform to all state and federal laws and rules regarding cable television as they become effective, unless otherwise stated. Company shall also conform during the entire term of the Franchise with all the City ordinances, resolutions, rules, regulations, orders and requests heretofore or hereafter adopted that do or do not apply specifically to the provision of Cable Service that are not preempted by federal law.

13.02 Compliance with Federal, State and Local Laws. If any term, condition or provision of this Franchise or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Company and the City.

### 13.03 Administration of Franchise.

A. The City shall have continuing regulatory jurisdiction and supervision over the System and the Company's operation under the Franchise. The City may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are not inconsistent with the provisions of the Franchise.

B. Company shall construct, operate and maintain the System subject to the supervision of all the authorities and agents of the City who have jurisdiction in such matters in strict compliance with all laws, ordinances, departmental rules and regulations affecting the system.

C. The System and all parts thereof shall be subject to the right of periodic inspection by the City provided that such inspection shall not unreasonably interfere with the operation of the System and such inspections take place during normal business hours.

### 13.04 Miscellaneous Violations.

A. In accordance with applicable law, from and after the acceptance of the Franchise, it shall be unlawful for any person to establish, operate or to carry on the business of distributing to any persons in the City any television signals or radio signals by means of a System unless a Franchise therefore has first been obtained pursuant to the provisions of an ordinance, and unless such Franchise is in full force and effect.

B. In accordance with applicable law, from and after the acceptance of the Franchise, the City shall not allow any person to construct, install or maintain within any street in the City, or within any other public property of the City, or within any privately owned area within the City which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City, or the City's official map or the City's major thoroughfare plan,

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any equipment or facilities for distributing any television signals or radio signals through a System, unless a multi-channel video service Franchise authorizing such use of such street or property or areas has first been obtained.

13.05 Emergency Use. In the case of any emergency or disaster, Company shall, upon request of the City, make available its System and related facilities to the City for emergency use during the emergency or disaster period. Specifically the Company shall provide video override on all channels for transmission of emergency messages, such video override being in the form of a "crawl" information to be superimposed on all channels (except where such insertion is prohibited by law).

13.06 Construction. This Franchise shall be construed and enforced in accordance with the substantive laws of the State of Florida and without reference to its principals of conflicts of law.

13.07 Captions. The paragraph captions and headings in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this Franchise.

13.08 Calculation of Time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

#### SECTION 14. EFFECTIVE DATE, PUBLICATION AND TIME OF ACCEPTANCE.

14.01 Publication; Effective Date. This Franchise shall be signed by the Mayor or acting Mayor and attested by the Clerk of the City. The Franchise shall be published in accordance with the requirements of city and state law and shall take effect upon acceptance by Company.

14.02 Time of Acceptance; Incorporation of Proposal; Exhibits.

A. Company shall have thirty (30) days from the date of adoption of this Franchise to accept this Franchise. Such acceptance by Company shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place within thirty (30) days or such other time as the City might allow, this Franchise shall be null and void.

B. Upon acceptance of this Franchise, Company shall be bound by all the terms and conditions contained herein. Company shall provide all services and offerings specifically set forth herein to provide Cable Services within the City.

#### SECTION 15. REPEAL OF CONFLICTING ORDINANCES.

All Ordinances, Resolutions or parts of ordinances and resolutions in conflict herewith are hereby repealed.

#### SECTION 16. SEVERABILITY.

If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this Ordinance.

#### SECTION 17. FORCE MAJEURE.

In the event that Franchisee's performance of any of the terms, conditions, obligations or requirements of this Franchise is prevented or impaired due to any cause beyond its control, including but not limited to Acts of God, labor disputes, manufacturers' or contractors' inability to timely provide personnel or material, failure of utility service, or any cause not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof.

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SECTION 18. This Ordinance shall become effective ten (10) days after passage.

The passage of this Ordinance on first reading was moved by Commissioner Clager, seconded by Commissioner McKinnon, and upon being put to a vote, the vote was as follows:

Mayor Tom Ramiccio	AYE
Commissioner Retha Lowe	AYE
Commissioner Colburn H. McKinnon	AYE
Commissioner Gary Bo Allen	AYE
Commissioner Lloyd A. Clager	AYE

The Mayor thereupon declared this Ordinance duly passed on first reading on the 19th day of May, 1998.

The passage of this Ordinance on second reading was moved by Commissioner Lowe, seconded by Commissioner Allen, and upon being put to a vote, the vote was as follows:

Mayor Tom Ramiccio	AYE
Commissioner Retha Lowe	AYE
Commissioner Colburn H. McKinnon	NAY
Commissioner Gary Bo Allen	AYE
Commissioner Lloyd A. Clager	NAY

The Mayor thereupon declared this Ordinance duly passed and enacted on the 2nd day of June, 1998.

Signed this 17<sup>th</sup> day of June, 1998.

CITY OF LAKE WORTH

COMCAST CABLEVISION OF WEST PALM BEACH, INC.

BY:

Tom Ramiccio  
Tom Ramiccio, Mayor

BY:

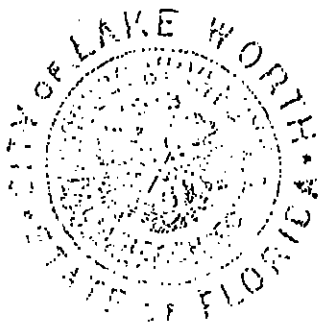
ATTEST:

Barbara L. Eberly  
Acting City Clerk  
Barbara L. Eberly

ATTEST:

DATE: June 17, 1998

DATE: 6-22-98



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